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Senate

On the Nomination of Judge John Roberts to be Chief Justice

Those of us privileged to serve in the U.S. Senate literally cast thousands of votes during the years that we spend here. Some votes are procedural in nature and are of little consequence. Others are far more meaningful. Katrina relief, pension reform, and trade agreements come to mind. Once in a great while, though, we are called upon in this body to cast a vote whose importance to our nation will resonate for years to come – whether to authorize the use of military force against other nations or whether to impeach a President.

There are few votes, however, that we will cast in our time here that will leave a more lasting impact on America than the one we will cast tomorrow morning. In confirming the nomination of John Roberts, something that's all but certain, we not only authorize him to serve as the Chief Justice of the United States Supreme Court, we will also make him the leader of the judicial branch of our government. A great deal is riding on this vote for our country and its people, both today and for a long time to come.

For many of us, this one is a close call. Understandable concerns have been

raised on a number of fronts about what kind of Chief Justice John Roberts ultimately will make. Do the writings of a young man in his 20s reflect the views of this 50-year-old man today? If not, why was he reluctant to clearly say so publicly when that opportunity presented itself? Why did the current Administration refuse to allow any scrutiny of the writings of Judge Roberts from when he served as the number two person in the Solicitor General's Office of former President Bush? What direction would Chief Justice Roberts seek to lead the Supreme Court in the coming years on issues relating to privacy, civil rights and the prerogatives of the Congress to set policy that may be at odds with the views of state and local governments? How will he seek to interpret and apply the Constitution and a wide variety of laws, both state and federal? Will the Roberts Court respect precedent or aggressively seek to establish new ones?

The honest answer to most of these questions is that none of us really knows for sure. Not the President. Probably not even Judge Roberts himself. That uncertainty explains at least in part why this vote is so difficult for many

members of this body. And so, we are asked to make a leap of faith. For some, that leap is not large. For others, it is.

For myself, I've decided to take the leap. After a great deal of deliberation, conversations with many Democrat and Republican members of the Judiciary Committee, as well as with others, I have decided to vote to confirm the nomination of John Roberts to serve as our nation's Chief Justice.

Yesterday, I had the privilege of meeting with Judge Roberts in my office. We discussed many of the concerns and question marks that I mentioned a few minutes ago. His responses were forthright, insightful, and, I believe, sincere.

Our conversation also provided me with insights into how a young man from a small town in Indiana could grow up, attend Harvard, become one of the most admired lawyers in America, be nominated for the Supreme Court not once but twice, and then sit through three days of often grueling questioning before the Senate Judiciary Committee, responding calmly and respectfully to questions on a wide range of legal issues without the benefit of any notes or even a pad of paper.

Judge Roberts and I spoke with one another at length about our respective childhoods and our parents, and the roles they played in our lives and the values they instilled in us and in our siblings. We also talked of our educational opportunities, our careers, our mentors, our spouses and even the children we are raising. It was a revealing and encouraging conversation, one that provided me with both important

insights into his personal values and with a measure of reassurance on the direction that he ultimately may seek to lead the highest court of our land.

I shared with him that in the eight years before coming to the Senate, I served as Governor of Delaware. In that role, I nominated dozens of men and women to serve as judges in our state courts, several of whom enjoy national prominence given my small state's role in business and corporate law.

Ironically, and I think wisely, Delaware's Constitution requires overall political balance on our state's courts. For every Democrat who is nominated to serve as a judge, Delaware Governors must nominate a Republican and vice versa. The result has been an absence of political infighting, and a national reputation for Delaware's state judiciary, regarded by some as the finest of any state in our land.

The qualities that I sought in the judicial nominees that I submitted to the Delaware State Senate included these: unimpeachable integrity; a thorough understanding of the law; a keen intellect; a willingness to listen to both sides of a case; excellent judicial temperament; sound judgment; and a strong work ethic.

In applying those standards to Judge Roberts, I believe that he meets or exceeds all of them. To my knowledge, no one has questioned his integrity, his intellect or his knowledge of the law. Democrats and Republicans senators alike watched, along with a national audience, as Judge Roberts fielded any number of tough questions over the days of hearings and responded

knowledgably, respectfully, with humility and occasionally with self-deprecating good humor. In all candor, I'm not sure that any of us would have done as well.

Having said that, though, questions and doubts remain about where Chief Justice Roberts will come down on a number of issues – reproductive rights, civil rights, and respect for congressional prerogatives to mention a few. I might add that – if truth be known – all of those doubters are not liberal Democrats either. Some of them are conservative Republicans, as well.

The answers to these questions will come in the years ahead as Chief Justice Roberts assumes this important post and begins to lead this Court and the judicial branch of our government. In the end, some of the decisions he helps to formulate may surprise and confound people on all sides of the political spectrum. That is something that one of his earliest mentors, Judge Henry Friendly of the Second Circuit Court of Appeals, has done for years.

Let me pause and ask my colleagues today to think back for a moment. How many of us would ever have imagined that a Texas congressman and senator with Lyndon Johnson's early civil rights record would go on to champion the civil rights of minorities like no other American President of the 20th Century? Who among us would have thought that Richard Nixon, a Cold War warrior for decades, would be the one to open the door for U.S. relations with Communist China?

Then, too, recall if you will the loathing that many conservatives came to feel

toward the late Chief Justice Earl Warren, a nominee of President Eisenhower, or the disdain that many liberals came to feel toward former Justice "Whizzer" White, a nominee of President Kennedy?

The truth of the matter is that life and its experiences do change most of us and some of our views in ways that cannot always be predicted. Having children of our own and later welcoming their children into our lives, as well as learning from our mistakes and from the mistakes of others, can combine to make us wiser, to temper our views, broaden our horizons and deepen our understanding of the views of others with whom we share this planet. And so is it likely to be with Judge Roberts.

As I prepare to take a leap of faith tomorrow – albeit not a reckless one in my view – let me close with a few words of advice – respectfully offered – to our President. A second nomination looms just around the corner. President Bush's choice of that nominee is as important as this one. That next choice can divide this Congress and our country even further or it can serve to bring us a little closer together. We need a choice that unites us, not one that divides us further. We also need a choice that reflects the diversity of the country in which we live. There are any number of well-qualified women, and maybe even a few men, who would make good choices for the seat now held by Justice Sandra Day O'Connor. On behalf of all us, Mr. President, let me urge you to send to us one of those names.